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THE LAW SCHOOL.

IN THE CLUB COURTS.

SUPREME COURT OF THE POW-WOW.

Insurance. Right of insurer to assignment of mortgage debt.

The defendant was mortgagee of Jones, for a house of the value of \$1,000. The plaintiffs were insurers of said house for the defendant, in the sum of \$1,000. The mortgage debt was also \$1,000. The house was subsequently destroyed by fire, and the plaintiffs, having paid the insurance money, bring this action to obtain from the defendant an assignment of his mortgage interest. The defendant had made the insurance in his own name without describing his interest as that of a mortgagee, and paid the premiums out of his own funds.

On these facts the court held for the plaintiff, on the following reasoning: There were in this case two separate contracts, — the mortgage debt and the policy of insurance. But they must be looked at together, in the light of the peculiar law of insurance, which says that a person who has been subjected to a loss of property by fire shall be indemnified. The defendant has been indemnified by the payment of the insurance money, which is the equivalent of his mortgage debt. If he is also allowed to retain the debt he will eventually have obtained double satisfaction, which would not only be in violation of the indemnity principle of the law of fire insurance, but would be placing a premium on incendiarism.

Now, the insurer of a person who has a remedy against some one to compel him ultimately to make good the loss stands in the position of a surety. *Darrell v. Tibbitts*, 5 Q. B. Div. 560. Though the mortgagee by the fire loses the security for the debt, and not the debt, yet as the ultimate object in view was the insurance of the debt, accomplished by means of insuring its security, payment of the insurance money places him in the same position as though he had lost the property through redemption. He having thus been indemnified, the insurer should succeed to his rights against the mortgagor, in order that the loss may be placed where it belongs. *Darrell v. Tibbitts*, 5 Q. B. Div. 560; *Smith v. Columbia Ins. Co.*, 17 Pa. St. 253; *Honore v. Lamar Ins. Co.*, 51 Ill. 409; *Norwich Ins. Co. v. Boomer*, 52 Ill. 442; *Sussex Ins. Co. v. Woodruff*, 2 Dutcher, 541; *Excelsior Ins. Co. v. Royal Ins. Co.*, 55 N. Y. at 359. The only decisions *contra* are in Massachusetts.

It may be objected that the mortgagee has lost his premiums; this is certainly true; but if his debt was a good one he could have no object in insuring, except as a speculation, which the law does not allow. If he chose to insure the house as a security for his debt, rather than trust solely to the mortgagor's solvency, there is no reason why he should reap the benefit of such insurance without paying for it.

SUPREME COURT OF THE THAYER.

Same case as the preceding.

The facts were identical with those in the preceding case; but the court reached an opposite conclusion, in favor of the defendant, on the following grounds: The right claimed by the company in this case cannot

be put on the ground of subrogation. There is no payment of the mortgage debt, for no one could pay it but the mortgagor. But to have subrogation it is necessary that the debt should be extinguished at law. The right must, therefore, be put upon some other ground.

It is said that a contract of insurance is a contract of indemnity, and that the company here has agreed to insure the defendant against loss upon his debt; and that practically the only way of adjusting such a loss is the method here proposed by the company. It seems, however, a conclusive answer to this, that the parties never contemplated insuring the debt, nor would the company, probably, have authority to insure a debt. The defendant was insured against the loss of certain property; and it is for such loss that the company must pay. *Excelsior Ins. Co. v. Royal Ins. Co.*, 55 N. Y. 343. If the debt had been the thing insured it would be necessary to find in each case how much the mortgagor's ability to pay the debt had been lessened by the fire; and that would be the measure of damages on the policy. Such, however, is not the course pursued.

In fact, the debt has nothing to do with the case. The defendant acquired his interest in the premises through the mortgage deed; and that instrument alone, not the mortgage debt, concerns this case. By the deed the defendant acquired an insurable interest in the property, equal, even in equity, to the amount of the mortgage debt. It is for the loss that has happened to *his* property that he recovers, and the company, having paid only what it agreed to pay, has no equity to claim the debt, and thus to deprive the defendant of the profits of his investment. (Bunyon, Insurance, 3d ed., p. 243.) If any one has an equity to have the insurance money applied in payment of the debt it is the mortgagor, not the company; and this equity would arise only upon maturity of the debt. The defendant had a right to recover the insurance money, and he has now a right to hold both the money and the debt. This right is recognized by the best late authorities. *Wood, Insurance*, p. 782; *Insurance Co. v. Boyden*, 9 All. 123; *King v. Insurance Co.*, 7 Cush. 1.

FROM THE LECTURE ROOM.

These notes were taken by students from lectures delivered as part of the regular course of instruction in the school. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.

WRONGFUL CONVERSION OF A TRUST FUND. RIGHTS OF THE BENEFICIARY. — (*From Professor Ames' Lectures.*) — Where a trust fund is misappropriated and converted into other property, the delinquent fiduciary may be charged as a constructive trustee of the newly acquired property.¹

If, however, the defrauded *cestui que trust* cannot trace the trust fund, directly or indirectly, into any specific property or fund, the trust, for want of a *res* to which it can attach, is extinguished, and the *cestui que trust* becomes a creditor.²

But, although the trust is gone, the circumstances may be such as to give the defrauded *cestui que trust* the position of a preferred

¹ Ames, Cas. on Trusts, 321, 325 n. 1.

² Ames, Cas. on Trusts, 331, 332 n. 1.